IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROOSEVELT SCARBOROUGH,
Plaintiff,

v.

CIVIL ACTION

LIFE INSURANCE CO.
OF NORTH **AMERICA,**
Defendant.

NO. 00-1466

ORDER

AND NOW, this 14th day of May, 2001, upon consideration of Defendant's Motion to Dismiss (Docket #2), and all responses thereto, IT IS HEREBY ORDERED that the state law claims are dismissed and the complaint is converted into **a** claim under 29 U.S.C. § 1132(a).

According to the complaint, the plaintiff, Roosevelt Scarborough, was employed by Lockheed Martin Corporation, in Moorestown, New Jersey. On or about March 1, 1997, he became disabled as the result of ongoing back problems. The plaintiff submitted a claim for long term disability benefits under a policy that was issued to Lockheed Martin by the defendant, Life Insurance Company of North America. The defendant denied the plaintiffs claim. The plaintiff then filed a complaint in Pennsylvania state court in March of 2000, alleging breach of contract and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. § 201-1 et **seq.** ("UTPCPA"). The defendant removed the case to federal court in April of 2000, claiming federal question jurisdiction under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. ("ERISA"). The defendant now brings a motion to

dismiss, claiming that the state law claims asserted on the face of the complaint are preempted under Section 514(a) of ERISA (codified at **29 U.S.C** § 1144(a)).

The plaintiff initially responded to the defendant's motion by requesting a remand to state court. The plaintiff contended that removal was improper. Specifically, the plaintiff argued that **ERISA** did not apply to the disability policy issued by the defendant because the policy was maintained solely for the purpose of complying with New Jersey's disability insurance laws. Such policies are exempt from ERISA. However, as the defendant pointed out, the provisions of the policy actually exceed the requirements of New Jersey law. For example, the maximum amount of disability benefits payable under the New Jersey Temporary Disability Benefits Law is 26 times the employee's weekly benefit amount or 1/3 of his **total** wages, whichever is less. See N.J. St. §43:21-38. Under the policy issued by the defendant, however, there is no maximum amount of benefits payable. The policy provides for 50% of the employee's monthly earnings (or $8,333, whichever is less), reduced by other income benefits. See Group Policy, D. Reply, **Ex. A,** at 9.

The plaintiff now concedes that ERISA applies to the policy that is attached to the defendant's supplemental brief ("attached policy"). Pl. Letter dated Nov. 8,2000. The only remaining question is whether the attached policy is the one that is relevant to the plaintiff's claims. Although the complaint references a plan with the policy number LK 008848 **and** the attached policy is numbered LK 008348, no other plan has been produced by either party. Thus, the Court will presume that the attached policy is the policy that is relevant to this lawsuit, and will find that it is an "employee benefit plan" that is subject to **ERISA.** Consequently, the Court denies the plaintiff's request for remand insofar as it is based **on** the inapplicability of **ERISA** under 29 U.S.C. § 1321(b)(11) or 29 **U.S.C** § 1003(b)(3).

The question of federal jurisdiction is an important one, however, and one which the Court must explore fully, whether raised by the parties or not. Having found that the policy issued by the defendant is an employee benefit plan as defined by the ERISA statute, the Court now considers whether the plaintiff's claims are subject to federal removal jurisdiction under the ERISA statute, or whether they should be remanded to state court.

State law claims relating to employee benefit plans are vulnerable to **ERISA** preemption, of which there are two types: express preemption under Section 514(a), and complete preemption under Section 502(a). See 29 U.S.C. §§ 1144(a), 1132(a). Express preemption mandates that federal law will apply to a claim, regardless of whether the case is brought in state or federal court. See Lazorko v. Penn. Hosp., 237 F.3d 242,248 (3d Cir. 2000). Complete preemption goes beyond express preemption and "operates to confer original federal subject matter jurisdiction notwithstanding the absence of a federal cause of action on the face of the complaint." See In re U.S. Healthcare, Inc., 193 F.3d 151, 160 (3d Cir. 1999). In short, it "converts" a state law claim into a removable federal claim, See id. **A** state law claim that falls short of complete preemption under Section 502(a) does not fall within the removal jurisdiction of federal courts. See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350,355 (3d Cir. 1995). In such a case, the federal court must remand the claim to state court, where the question of express preemption will be decided. See id.

Both of the plaintiff's claims fall within the scope of Section 502(a) and are thus subject to complete preemption.[1] Section 502(a) provides, in relevant part, that a beneficiary

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[1] In its notice of removal, the defendant concedes that the plaintiff's claim "is for benefits allegedly due her [sic] under the plan." See Notice at 3. However, the Court is under an independent obligation to examine whether removal jurisdiction exists, as federal jurisdiction

(continued...)

may bring a claim "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). The Third Circuit has held that a claim relating to the *quality* of benefits does not fall under Section 502(a). On the other hand, a claim for the ***quantity*** of benefits relates to the administration of the plan and does fall under Section 502(a). See Dukes, 57 F.3d at 356-57.

In the instant case, both of the plaintiffs claims relate to the quantity of benefits allegedly due under the plan. Count I of the complaint states that the defendant "fail[ed] to pay . . . disability benefits due and owing." Complaint at **3.** This constitutes an action to recover benefits that were never provided; therefore, it goes to the quantum of benefits, and not to the quality. Indeed, the Third Circuit has stated that "claims that fall within the essence of the administrator's activities" such as "determining eligibility for benefits ... fall within section 502(a)(1)(B) and are completely preempted." See In re U.S. Healthcare. Inc., 193 F.3d at 162. Count II of the complaint states that "[a]s a result of Defendant's failure to conduct a full, fair and impartial investigation of Plaintiff's claim, Plaintiff has been denied his long *term* disability benefits available under the policy. ..." Complaint at 4. **A** claim for failure to conduct **a** full, fair and impartial investigation is a claim for an unfair denial ***of*** insurance benefits. **Like** Count I, Count II raises a dispute over the quantum of benefits received. It too is a claim to recover benefits allegedly due under the plan, as provided for in Section 502(a). Therefore, the complaint was properly removed to federal court.

(...continued)
cannot be conferred by stipulation, agreement or consent of the parties. See, e.g., Kaufman **v.** Liberty Mut. Ins. Co., 245 F.2d 918, 920 **(3d** Cir. 1957); Rains v. Criterion Systems, Inc., 80 F.3d 339, **342** (9th Cir. 1996). Thus, the substance of the plaintiffs claims will be examined.

Having determined that this case falls within this Court's jurisdiction, the Court now turns to the defendant's motion. The defendant seeks to strike Counts I and II and to dismiss the state law claims asserted by the plaintiff. Because the state law claims are completely preempted under Section 502(a), the Court will grant the defendant's motion. The plaintiffs state law claims are dismissed and the complaint is converted into a federal claim under Section 502(a) of ERISA. See In re U.S. Healthcare, Inc., 193 F.3d at 160.

BY THE COURT:

Mary A. McLaughlin

MARY A. McLAUGHLIN, J.